

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JAMES CLEM, derivatively on behalf  
Eaton Corp.,**

**Plaintiff,**

**vs.**

**ALEXANDER M. CUTLER, et al.,**

**Defendants.**

) **Case No. 1:11 CV 2515**

) **Case No. 1:12 CV 89**

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) **Judge Dan Aaron Polster**

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**MINUTES OF TELECONFERENCE**

**and**

**ORDER RE: GRANTING MOTION TO  
CONSOLIDATE**

**and**

**ORDER OF DISMISSAL  
WITHOUT PREJUDICE**

On November 18, 2011, Plaintiff James Clem filed a Verified Shareholder Derivative Complaint for Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment against certain officers and directors of Eaton Corporation arising from an antitrust lawsuit brought against Eaton by ZF Meritor LLC and Meritor Transmission Corporation (“the Clem case”).<sup>1</sup> (Case No. 1:11 CV 2515, Doc #: 1.) The Clem case was initially assigned by random

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<sup>1</sup>ZF Meritor LLC and Meritor Transmission Corp. were rivals of Eaton in the manufacture of Class 8 commercial truck transmissions. *See ZF Meritor LLC, et al. v. Eaton Corp.*, Case No. 1:06-cv-00623-SLR (D. Del.) (“ZF Meritor”), Doc #: 259, Memorandum Opinion, at 2.

draw to District Judge James Gwin. After Judge Gwin recused himself, the case was assigned by random draw to me. (Id., see non-document entry of 12/21/2011.)

On January 13, 2012, Plaintiff Richard C. Dunne filed a Verified Shareholder Derivative Complaint against certain officers and directors of Eaton arising from the same antitrust lawsuit (“the Dunne case”). (Case No. 1:12 CV 89, Doc #: 1.) The Dunne case was assigned by random draw to District Judge Donald Nugent. On January 20, 2012, Dunne filed a motion to transfer his case to my docket as related to the earlier-filed Clem case. (Id., Doc #: 4.) Judge Nugent and I consented to transfer of the Dunne case to my docket. (Id., Doc #: 7.)

Following transfer of the Dunne case to my docket, the parties in the Clem case filed a Joint Motion to Consolidate the Clem and Dunne cases for orderly case management. (Case No. 1:11 CV 2515, Doc #: 15.) Plaintiff Dunne supported the Joint Motion. (Id., at 2.)

After reviewing the Joint Motion and the record, the Court held a telephone conference with counsel on February 6, 2012. At that time, the Court **GRANTED** the Joint Motion to Consolidate the Clem and Dunne cases.

During the February 6 teleconference, the Court learned from counsel that, in the underlying case brought against Eaton by ZF Meritor, there was a jury finding of liability against Eaton, but a zero damages award.<sup>2</sup> Counsel reported that Eaton has appealed the liability verdict,<sup>3</sup> while ZF Meritor has appealed the zero damages award.<sup>4</sup> The Court determined that the issues raised in these consolidated cases (e.g., whether the officers and directors breached their

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<sup>2</sup>See also *ZF Meritor*, Doc ##: 215, 226, 280.

<sup>3</sup>*Id.*, Doc #: 284.

<sup>4</sup>*Id.*, Doc #: 288.

fiduciary duty to the corporation) can not be litigated until the issues presently on appeal have been finally decided – and there is no way to determine when those issues will be finally decided. Accordingly, because the consolidated cases are premature, they are hereby

**DISMISSED WITHOUT PREJUDICE.**

**IT IS SO ORDERED.**

/s/ Dan A. Polster February 7, 2012

**Dan Aaron Polster**

**United States District Judge**